

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

V.

CARRIE LEE AENK,

Defendant.

NO. CR-96-100-RHW
CV-05-049-RHW

**ORDER DISMISSING
DEFENDANT'S SECOND
MOTION PURSUANT TO 28
U.S.C. § 2255 FOR FAILURE TO
OBTAIN ORDER AUTHORIZING
SECOND PETITION FROM
COURT OF APPEALS**

Before the Court is Defendant Carrie Lee Aenk's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Ct. Rec. 158). The Defendant is currently on supervised release. For the reasons explained below, this motion is denied in its entirety.

BACKGROUND

On October 10, 1996, Defendant was sentenced to 33 months of incarceration and 5 years of supervised release after pleading guilty to bank fraud, in violation of 18 U.S.C. § 1344(1) & (2)(b). On appeal to the United States Court of Appeals for the Ninth Circuit, Defendant argued that the Court erred in calculating the intended loss involved in the offense. The Court's finding was affirmed by way of an unpublished memorandum (Ct. Rec. 71). On March 2, 1998, the Defendant filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside,

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TO 28 U.S.C. § 2255 *** 1

1 or Correct Sentence by a Person in Federal Custody (Ct. Rec. 68), which was
2 denied on October 29, 1998 (Ct. Recs. 95-96). On March 2, 1999, the Ninth
3 Circuit denied Defendant's motion for a certificate of appealability.

4 This section 2255 motion is Defendant's second. Before filing a second or
5 successive motion under section 2255, the Defendant must obtain an order from
6 the court of appeals authorizing the district court to hear this motion before the
7 Court may consider its merits. 18 U.S.C. § 2255. Without such an order, this Court
8 lacks jurisdiction to review the merits of the Defendant's claim.

9 Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion for
10 Review of Sentence is **DISMISSED**.

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
12 order and to provide copies to the Defendant and the Assistant United States
13 Attorney and **close the file**.

14 **DATED** this 16th day of February, 2005.

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16 s/ ROBERT H. WHALEY
17 United States District Judge
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TO 28 U.S.C. § 2255 * 2**